



**STATE OF NEW JERSEY**

**Board of Public Utilities**

*Two Gateway Center  
Newark, NJ 07102*

**ENERGY**

In the Matter of the Verified Petition of Jersey )  
Central Power & Light Company, doing business) )  
as GPU Energy, seeking Approval of the Sale of )  
the Company's Interest in the Three Mile Island )  
Unit 1 Nuclear Generating Facility Pursuant to )  
N.J.S.A 48:3-7, a Specific Determination )  
Allowing the Three Mile Island Unit 1 Nuclear )  
Generating Facility To Be an Eligible Facility )  
Pursuant to Section 32 of the Public Utility )  
Holding Company Act of 1935 and a Waiver )  
of the Advertising Requirements of )  
N.J.A.C. 14:1-5.6(b). )

**SUMMARY ORDER**

**Docket No. EM98121409**

**(SERVICE LIST ATTACHED)**

**BY THE BOARD:**

This Summary Order memorializes in summary fashion the action taken by the Board of Public Utilities (Board) in this matter at its December 7, 1999 public agenda meeting. The Board will issue a more detailed Decision and Order in this matter in the near future, which will provide a full discussion of the issues as well as the reasoning for the Board's determinations.

This matter came before the Board by a petition filed on December 11, 1998 by Jersey Central Power & Light, doing business as GPUE (the Company) <sup>1</sup> seeking (a)

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<sup>1</sup> JCP&L and its affiliates, Metropolitan Edison Company (Met. Ed.) and Pennsylvania Electric Company (Penelec) (collectively, the GPUE Companies) are public utility subsidiaries of GPU, Inc.

approval of the Sale of its 25% interest in the TMI-1 nuclear generating facility<sup>2</sup> to AmerGen<sup>3</sup> pursuant to N.J.S.A. 48:3-7; (b) a specific determination by the Board allowing TMI-1 to be an Eligible Facility pursuant to Section 32 of the Public Utility Holding Company Act of 1935 (PUCHA); and (c) a waiver of the advertising requirement of N.J.A.C. 14:1-5.6(b).

Further, on July 26, 1999 the Board adopted a procedural schedule in order to allow parties the opportunity to review and provide input to the Board regarding the pending sale of the Company's 25% interest in the TMI-1 nuclear generating facility to AmerGen, and its non-nuclear generating assets to Sithe Energies, Inc. (Sithe)<sup>4</sup>. The procedural schedule included an opportunity for parties to propound discovery, participate in a public/legislative type hearing, as well as submit comments and reply comments to the Board.

On August 20, 1999 Commissioner Butler conducted a Public/Legislative Type Hearing regarding the pending sale of the Company's 25% interest in the TMI-1 nuclear generating facility to AmerGen, and its non-nuclear generating assets to Sithe. Both GPUE and the Division of the Ratepayer Advocate (RPA) participated in the hearing.

On August 27, 1999 the Board received written comments from the Company and the RPA, with both parties filing reply comments with the Board on September 23, 1999.

#### **TERMS OF THE TMI-1 NUCLEAR GENERATING FACILITY SALE:**

The GPUE Companies and GPUN (collectively referred to as the Sellers) on October 15, 1998 entered into a Asset Purchase Agreement (APA) and related agreements providing for the sale of their TMI-1 nuclear generating facility to AmerGen for

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<sup>2</sup> The TMI-1 nuclear generating facility is a 786 MW nuclear generating facility located near Middletown, Pennsylvania, which was constructed by the GPUE companies and placed into service in 1974. The TMI-1 nuclear generating facility is jointly owned by JCP&L, Met. Ed. and Penelec in percentages of 25%, 50 % and 25% respectively, and is operated by GPU Nuclear (GPUN) which is a wholly-owned subsidiary of GPU, Inc.

<sup>3</sup> AmerGen is a limited liability company among PECO Energy Company (PECO), British Energy plc (British Energy), a Scottish corporation and British Energy Inc. (BEI) a Delaware corporation which is a wholly-owned subsidiary of British Energy, formed to acquire and operate nuclear power plants in the United States.

<sup>4</sup> The sale of the Company's non-nuclear was approved by the Board by Order dated November, 4, 1999, Docket No. EM99020067.

approximately \$100 million, subject to certain adjustments<sup>5</sup>. The \$100 million total purchase price consists of a \$23 million closing payment for the TMI-1 plant, and approximately \$77 million for the nuclear fuel in the reactor's core at closing, which is payable in five equal annual installments commencing one year after the closing date<sup>6</sup>. As part of the APA, the Sellers will convey to AmerGen all of their right, title and interest in and to all assets constituting, or used in and necessary for the operation of TMI-1 nuclear generating facility, including, among other things, the nuclear reactor, the nuclear fuel, the real property upon which TMI-1 is sited, all inventories, machinery, equipment, all books, records and operating manuals, agreements relating to ownership, operation and maintenance and transferable warranties and guarantees. The total purchase price assumes a December 31, 1999 closing and that, therefore, the closing would occur following TMI-1 nuclear generating facility's next scheduled refueling outage in the fall of 1999. However, the Sellers and AmerGen recognize that the closing could occur prior to that refueling outage, and have provided in the APA for certain price adjustments in the event they are able to reach agreement on a pre-outage closing.

The APA, among other things, provides that the GPUE Companies will fund the nuclear decommissioning trusts for the TMI-1 nuclear generating facility up to a maximum of \$320 million, of which the Company's share is \$80 million<sup>7</sup>. As of the date of the closing, all liabilities and obligations for the decommissioning of TMI-1 will be assumed by AmerGen, with the Sellers having no further liabilities or obligations with respect to the decommissioning of the TMI-1 nuclear generating facility thereafter.

The APA also requires that AmerGen offer employment to the Sellers' approximately 750 union and non-union employees located at the TMI-1 nuclear generating facility and involved in the operation and maintenance of the TMI-1 nuclear generating facility. AmerGen will also assume the current collective bargaining agreement covering the TMI-1 nuclear generating facility's bargaining unit employees. In addition, AmerGen may offer employment to any of the Sellers' employees located in the Sellers'

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<sup>5</sup> Adjustments include: The closing payment is to be adjusted downward by \$5 million to account for anticipated post-closing repairs or replacement by AmerGen of the TMI-1 reactor's low pressure turbines. Other purchase price adjustments will be made to reflect certain capital additions to or replacement of property, plant and equipment included in the TMI-1 assets being purchased and proportion of certain rents, taxes and permitting, registration and licensing fees included within the total purchase price.

<sup>6</sup> The nuclear fuel payment will be adjusted based on the fuel in the reactor core as of the closing date.

<sup>7</sup> As of September 30, 1998, the TMI-1 nuclear decommissioning trust had a value of \$159 million, of which the Company's share is \$44 million.

Parsippany, New Jersey headquarters, all of whom are non-union employees<sup>8</sup>. The Sellers will remain responsible for all severance payments associated with any of their employees hired by AmerGen, if they are terminated for any reason other than for cause or disability, (a) during the first year following the closing date, or (b) during the two years following the closing date, provided that AmerGen has notified the Sellers of its intent to terminate such employees prior to the first anniversary of the closing date. AmerGen is required to adopt pension and other employee benefit plans for retained employees that provide substantially similar benefits to the Sellers' current plans. As part of the Sellers' retirement protection program, the Sellers' will be responsible for any enhanced retirement benefits payable to these employees. The Sellers have also provided for all eligible TMI-1 nuclear generating facility site bargaining employees to participate in a voluntary early retirement program (VERP). The VERP is consistent with comparable programs the GPUE Companies have offered in the past. The Sellers are responsible for the cost of the VERP.

As part of the sale, the GPUE Companies and AmerGen have also entered into a transition power purchase agreement (TPPA) simultaneously with the execution of the APA. The TPPA provides that, from the closing through 2001, the GPUE Companies will purchase from AmerGen (in the same percentages as their ownership interests in TMI-1) the total net electric output of the TMI-1 nuclear generating facility, as well as unforced capacity as defined by the PJM Reliability Assurance Agreement (RAA). The prices for such purchases were derived from the Company's "market line" forecast included in its stranded costs proceeding (Stranded Costs Proceeding)<sup>9</sup>.

It should be noted that the APA expressly excludes from the sale, the Three Mile Island Unit 2 (TMI-2) nuclear generating facility, for which GPUN will remain the Nuclear Regulatory Commission (NRC) licensee. As such, GPUN will continue to be responsible for maintaining the TMI-2 nuclear generating facility in a stable, safe and secure condition.

## **FINDINGS:**

Based on our review of the record in this matter we find that the sale of the TMI-1 nuclear generating facility to AmerGen is in the public interest, does not violate State law, and continues the maintenance of the reliability of the region's electric system. As such, based upon the record in this proceeding:

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<sup>8</sup> The Parsippany-based employees primarily provide support for TMI and Oyster Creek Nuclear Generating Facility.

<sup>9</sup> In the Matter of Jersey Central Power & Light Company d/b/a GPU Energy – Rate Unbundling, Stranded Cost and Restructuring Filings, Docket Nos. EO97070458, EO97070459, and EO97070460.

- The Board **HEREBY FINDS** that the Company's sale process has satisfactorily complied with the Board's Auction Standards (Auction Standards) which were adopted in the Board's June 16, 1998, Order Adopting Auction Standards<sup>10</sup> by meeting the intent of Standards Nos. 1 through 4 addressing the sales process, where the unique nature of the sale of the TMI-1 nuclear generating facility did not lend itself to a formal competitive bidding process, but in its absence the GPUE Companies made reasonable efforts to identify and contact potential qualified purchasers that were qualified to operate a nuclear generation facility, and also by meeting the letter of the remaining Standards Nos. 5 through 10;
- In light of our finding that the Company sale process is consistent with the Auction Standards, we **HEREBY WAIVE** the advertising requirement as set forth at N.J.A.C. 14:1-5.6(b) as this requirement has been fulfilled by the Company's efforts to identify and contact potential qualified purchasers of nuclear generating facilities;
- The Board **HEREBY FINDS** that the Company has demonstrated that its sale process has complied with the provisions set forth in sections 11 (b) and (c) of the Electric Discount and Energy Competition Act (N.J.S.A. 48:3-59), in that the sale of the Company's 25% interest in the TMI-1 nuclear generating facility to AmerGen reflects the full market value of the asset; is in the best interest of the Company's customers, will not jeopardize reliability of the electric power system; will not result in undue market control by AmerGen in the generation market; mitigates the impact of the sale on the Company's workers; and as described above is consistent with the Board's Auction Standards;
- The Board **HEREBY APPROVES** the sale of the Company's 25% interest in the TMI-1 nuclear generating facility to AmerGen for a \$100 million total purchase price, which consists of a \$23 million closing payment subject to certain adjustments at closing, for which the Company's share is approximately \$5.75 million, and approximately \$77 million for the nuclear fuel in the reactor's core at the time of the closing, for which the Company's share is approximately \$19.25 million, payable in five equal annual installments commencing one year after the closing date, pursuant to N.J.S.A. 48:3-7;
- Regarding the Company's proposed treatment of the federal income tax benefits associated with the subject divested assets, which include the Investment Tax Credit (ITC), Excess Deferred Income Taxes (EDIT) associated with changes in the corporate tax rate, and Accumulated Deferred Income Taxes (ADIT) associated with timing differences between tax and book accounting, namely, timing differences associated with accelerated tax depreciation, the Board **HEREBY ORDERS** the Company to file for a private letter ruling with the IRS regarding these federal income tax benefits associated with the subject divested assets. We further **DIRECT** the Company to advise the Board upon receipt by the Company of a private letter ruling

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<sup>10</sup> Docket Nos. EX94120585Y, EO97070457, EO97070460, EO97070463 and EO97070466.

from the IRS regarding the treatment of the federal income tax benefits associated with the subject divested assets, and to submit a filing within 30 days of receipt of such private letter ruling which shall include a final proposed determination of the net divestiture proceeds associated with the instant transaction. Accordingly, our final determination of the net proceeds and stranded costs associated with the TMI-1 nuclear generating facility will await the outcome of the IRS private letter ruling;

- The Board **HEREBY APPROVES** the TPPA entered into by the Company with AmerGen and finds it to be in the public interest, in accordance with applicable law, and the rates specified therein and the costs resulting therefrom to be reasonable and prudently incurred by the company throughout the full term of the TPPA, and will permit the Company to flow through and/or full and timely recovery of the costs resulting therefrom as part of its basic generation service;
- The Board **HEREBY DETERMINES** that allowing the TMI-1 nuclear generating facility being sold by the GPUE Companies to be an Eligible facility pursuant to section 32 of the PUCHA will benefit consumers, is in the public interest and does not violate New Jersey Law; and
- Finally, the Board **HEREBY DIRECTS** the Company to file with the Board, within 15 days of the closing date of the asset sale, proof of closing and the net transaction costs.

DATED: 12/15/99

BOARD OF PUBLIC UTILITIES  
BY:

SIGNED  
HERBERT H. TATE  
PRESIDENT

SIGNED  
CARMEN J. ARMENTI  
COMMISSIONER

SIGNED  
FREDERICK F. BUTLER  
COMMISSIONER

ATTEST: SIGNED  
MARK W. MUSSER  
SECRETARY

## **SERVICE LIST**

**Jersey Central Power & Light Company, doing business as GPU Energy, seeking  
the approval of the Sale of its 25 % Interest in the Three Mile Island Unit 1 Nuclear  
Generating Facility to AmerGen**

**Docket No. EM98121409**

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